U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GREGORY L. JONES and U.S. POSTAL SERVICE,
POST OFFICE. Cleves, OH

Docket No. 02-2316; Submitted on the Record;
Issued February 26, 2003

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant sustained an employment-related injury to his left foot and ankle on or around February 15, 2002.

On February 15, 2002 appellant, then a 36-year-old letter carrier, filed a notice of traumatic injury, Form CA-1, alleging that, on that date, while delivering the mail in the performance of duty, he injured his left foot and ankle when he stepped in a hole in a customer's lawn. Appellant's claim was signed by postmaster Rick Kampschmidt on February 15, 2002. In a note dated March 1, 2002, Mr. Kampschmidt stated that appellant had properly reported twisting his ankle, but had decided not to seek immediate medical attention. In a follow-up note dated March 4, 2002, Mr. Kampschmidt indicated that appellant had decided to seek medical attention. In support of his claim, appellant submitted form reports and treatment notes dating from March 1 to July 3, 2002 from Dr. Tasleem A. Minhas, his treating Board-certified orthopedic surgeon, and another physician at Mercy Franciscan Hospital emergency room.[1]

In a decision dated August 22, 2002, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that he had not submitted sufficient evidence to establish that he sustained an injury in the performance of duty, as alleged.

The Board finds that this case is not in posture for a determination of whether appellant sustained an employment-related injury to his left foot and ankle on or around February 15, 2002. Further, development of the medical evidence is required.

An employee seeking benefits under the Federal Employees' Compensation Act[2] has the burden of proof to establish the essential elements of his claim.[3] When an employee claims that

[1] The physician's signature is illegible.

[2] 5 U.S.C. §§ 8101-8193.

[3] *See Margaret A. Donnelley*, 15 ECAB 40 (1963).

he sustained an injury in the performance of duty, he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He must also establish that such event, incident or exposure caused an injury.[4]

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether "fact of injury" has been established. Generally, "fact of injury" consists of two components, which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment, incident which is alleged to have occurred. The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[5]

An injury does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty as alleged, but the employee's statements must be consistent with surrounding facts and circumstances and his subsequent course of action. Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain medical treatment, may cast sufficient doubt on an employee's statements in determining whether he or she has established a *prima facie* case. The employee has the burden of establishing the occurrence of the alleged injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence. An employee has not met this burden when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.[6]

In this case, the Board initially notes that the record contains conflicting reports concerning the date of injury. On his initial claim signed by both himself and his postmaster on February 15, 2002, appellant stated that the injury occurred on February 15, 2002. In a narrative statement submitted in support of his claim, appellant stated that his initial injury occurred on February 14, 2002. Finally, the medical reports of record list the date of the initial injury as February 19, 2002.

Appellant stated that, on the day of the injury, his ankle swelled and was painful, but he was able to tighten his shoes and continue walking his route. He stated that his boss was very understanding about his situation and although the branch office was often shorthanded, on days when there were enough personnel he allowed appellant to perform only the driving portions of his route. Appellant explained that the busy understaffed office, combined with his hope that his foot would get better with time, caused him to delay seeking medical attention. However, by March 1, 2002, his foot had gotten no better, so he presented at the local emergency room.

While the record contains conflicting dates of injury and appellant delayed in seeking medical attention, the Board notes that it remains undisputed that, on or about February 15, 2002,

[4] *See generally John J. Carlone*, 41 ECAB 354 (1989); *see also* 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R § 10.5(q) ("occupational disease or illness" defined).

[5] *John J. Carlone*, *supra* note 4.

[6] *Merton J. Sills*, 39 ECAB 572 (1988).

while in the performance of his duties as a letter carrier, appellant stepped in a hole in a patron's lawn, twisting his left foot and ankle. This history was not contested by his supervisor. The medical reports all contain the same history of injury and appellant's postmaster indicated that by check mark on appellant's claim form that appellant's injury occurred while in the performance of duty. In addition, appellant offered a rational explanation for his delay in seeking medical attention. Therefore, the Board finds that the inconsistencies regarding the date of injury are insufficient to cast serious doubt on the validity of his claim and finds that the evidence of record is sufficient to establish that an incident occurred, as alleged, on or about February 15, 2002.

The question, therefore, becomes whether the February 15, 2002, incident caused or aggravated the left foot and ankle condition, for which he seeks compensation.

Causal relationship is a medical issue,[7] and the medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,[8] must be one of reasonable medical certainty,[9] and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incidents or factors of employment.[10]

The relevant medical evidence of record consists of emergency room notes from Mercy Franciscan Hospital and treatment notes from Dr. Minhas, appellant's treating Board-certified orthopedic surgeon. The emergency room notes, dated March 1, 2002, indicated that appellant reported that on February 19, 2002 he twisted his left foot when he stepped in a hole while at work. The report notes that no swelling was present and that appellant's foot was not tender to the touch, but continued to be painful after overuse. The report contains a diagnosis of left foot injury and indicates by check mark that appellant's foot conditions are causally related to his employment. In an initial report dated March 7, 2002, Dr. Minhas noted that appellant had a history of having sustained a left ankle injury on February 19, 2002 when he stepped in a hole while crossing a yard to deliver mail. Dr. Minhas noted that, upon examination, there was no swelling of the foot or ankle and no tenderness at the ankle, but definite tenderness over the tarsal metatarsal joint of the middle ray on palpation. X-rays performed that day did not show any obvious bony injury.[11] Dr. Minhas diagnosed left ankle sprain and left midfoot sprain, resolving and placed appellant on limited duty.

[7] *Mary J. Briggs*, 37 ECAB 578 (1986).

[8] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[9] *See Morris Scanlon*, 11 ECAB 384-85 (1960).

[10] *See William E. Enright*, 31 ECAB 426, 430 (1980).

[11] The physician notes that x-rays did reveal that appellant's medial sesamoid under the head of the first metatarsal is in two portions, but added that appellant had no symptoms over that area.

In a follow-up report dated March 28, 2002, Dr. Minhas noted that appellant reported that he was still delivering mail, but mostly using a vehicle, with very little walking. Appellant reported that his left foot and ankle were feeling fine, with no swelling or tenderness, so he tested himself by walking on a treadmill at his health club. After about 15 minutes, however, he began to have severe pain in the left midfoot. He stated that he backed off from walking, but his pain continued for a day. On examination, Dr. Minhas noted that appellant had no obvious swelling but had some tenderness of the dorsum of his left midfoot over the tarsal metatarsal area of the second and third rays. He concluded that appellant had aggravated his sprain, which had been resolving and advised appellant to cut down on his walking and to continue his exercises.

In a chart note dated April 17, 2002, Dr. Minhas noted that appellant reported that his foot and ankle were feeling fine and that he had started walking a partial route with no difficulty. The physician noted no obvious swelling and no tenderness anywhere on the left ankle of foot. In follow-up reports dated April 24 and May 22, 2002, Dr. Minhas noted that appellant again reported pain after walking. He noted that appellant had no swelling but slight tenderness April 24, 2002 and no swelling or tenderness anywhere on the foot or ankle on May 22, 2002. The physician diagnosed residual foot sprain and noted that, because of appellant's continuing symptoms, additional x-rays were taken, but they did not show any bony or joint injury or pathology. He advised appellant to take his medication regularly and continue his exercises. In a report dated May 30, 2002, Dr. Minhas noted that appellant's foot was improving, with no swelling or tenderness and that appellant wanted to be released to full duty. In his final report of record dated July 3, 2002, Dr. Minhas noted that appellant reported that, as long as he took his pain medication regularly, he could walk with no pain, but if he did not take the medication, he had pain the next day. Dr. Minhas noted that appellant had no swelling or pain on physical examination, advised appellant to continue to take his pain medication and stated that he felt appellant should undergo a bone scan, in light of continued complaints.

The medical record in this case lacks a well-reasoned narrative from a physician relating appellant's left foot and ankle condition to the employment injury, which occurred on or around February 14, 2002. The emergency room notes express an opinion on causal relationship only by checkmark,[12] and while Dr. Minhas reported the history of appellant's injury, he did not provide a report, in which he explained the mechanism of the injury. In addition, Dr. Minhas noted that appellant was doing much better until he aggravated his condition by walking on a treadmill, thus raising the possibility of an intervening injury. The Board finds that the medical reports submitted by appellant, taken as a whole, raise an uncontroverted inference of causal relationship sufficient to require further development of the case record by the Office.[13] Additionally, the Board notes that in this case the record contains no medical opinion contrary to appellant's claim and further notes that the Office did not seek advice from an Office medical adviser or refer the case to an Office referral physician for a second opinion. The Board will set

[12] A medical report which checks a box on a form report "yes," with regard to whether a condition is employment related, is of diminished probative value without further detail and explanation. *Alberta S. Williamson*, 47 ECAB 569 (1996); *Lester Covington*, 47 ECAB 539 (1996).

[13] *See John J. Carlone, supra* note 4 (finding that the medical evidence was not sufficient to discharge appellant's burden of proof but remanding the case for further development of the medical evidence given the uncontroverted inference of causal relationship raised).

aside the Office's August 22, 2002 decision and remand the case for further development of the medical evidence regarding the causal relationship, if any, between appellant's employment and the diagnosed left ankle conditions. Following such further development as may be necessary, the Office shall issue an appropriate final decision on appellant's claim.

The August 22, 2002 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this opinion.

Dated, Washington, DC
February 26, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member